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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,833	09/28/2001	David B. Kumhyr	AUS920010401US1	4999
35617	7590	08/22/2005	EXAMINER	
DAFFER MCDANEIL LLP			DENNISON, JERRY B	
P.O. BOX 684908			ART UNIT	
AUSTIN, TX 78768			PAPER NUMBER	

2143

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/966, 833

Applicant(s)

KUMHYR ET AL.

Examiner

J. Bret Dennison

Art Unit

2143

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED July 19, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3-11, 13-28 and 30-32.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**DAVID WILEY**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Applicant argues that Olsen does not disclosed a method for establishing a computer-based communications session, where the method includes determining the availability of a potential participant in the communications session, and where the step of determining comprises retrieving availability information for the potential participant from a data structure (see Applicant's response, page 8, first paragraph).

The term "potential" in "potential participant in the communications session" does not give any weight to the limitation because it does not explain anything (i.e. potential to what?) and is therefore the phrase "potential participant" is given a broad latitude as a participant in a communications session.

Olsen disclosed determining the state of participants in a communications session, and providing the state to all clients in the session (Olsen, col. 6, lines 10-35).

Applicant argues that Olsen does not disclose retrieving availability information from a data structure (see Applicant's response, page 8, last paragraph) and a method that obtains user (or participant) identifiers for identifying the user to each of a plurality of dissimilar applications available for use in a communications session (see Applicant's response, page 11, last paragraph).

Olsen disclosed each client providing a data structure that uniquely identifies the client with the session (Olsen, col. 7, lines 45-60).

Applicant argues that Olsen does not disclose a system including a means for displaying participant availability information on a display screen, wherein the participant availability information indicates the availability of a potential participant for each plurality of dissimilar communications applications (see Applicant's response, page 13).

The term "dissimilar communications applications" is interpreted by Examiner as not the same communications applications. Because each client is running a different communications application, they are dissimilar. Applicant should be more specific as to what the term "dissimilar" means.

Olsen disclosed each client representing a particular computer application executing on a general purpose computer (Olsen, col. 6, lines 1-6) each client computer including displaying means for displaying and outputting information to the participant (col. 5, lines 10-15) and Olsen explains the participants playing a game that provides player stats (Olsen, col. 6, lines 10-25).

The terms that Applicant is arguing, mainly "potential participant" and "dissimilar communications applications" can be interpreted in a very broad manner. The claims do not explain what the participant is potential to, as well as does not explain how the applications are dissimilar. Therefore, the term "potential", in regards to the claims, has no patentable weight. The term dissimilar for example could mean dissimilar in that the applications are on different computers, or applications running on each client's particular computer. Besides, Olsen also disclosed that a number of computer applications could be used in this exchange of data (Olsen, col. 5, lines 50-55).